

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

<b>MASS ENGINEERED DESIGN, INC. and JERRY MOSCOVITCH</b>	§	
	§	
	§	
<b>Plaintiffs</b>	§	
	§	
	§	
<b>vs.</b>	§	<b>CASE NO. 206 CV 272</b>
	§	<b>PATENT CASE</b>
	§	
	§	
<b>ERGOTRON, INC., DELL INC., CDW CORPORATION, and TECH DATA CORPORATION</b>	§	
	§	
	§	
<b>Defendants</b>	§	
	§	

**MEMORANDUM OPINION AND ORDER**

Before the Court are Plaintiffs MASS Engineered Design, Inc. and Jerry Moscovitch's (collectively "MASS") Motion to Clarify Claim Construction Opinion (Docket No. 282). After careful consideration of the parties' written submissions, the Court **GRANTS** MASS's motion for clarification.

**BACKGROUND**

On March 13, 2008, the Court issued its claim construction opinion construing disputed terms in the '978 and '170 patents. MASS moves to clarify the Court's construction of the '978 patent's term "mounting means," which all parties agree is a means-plus-function limitation. In particular, MASS seeks clarification on whether "rear of the display 16" is included structure for the Figure 8/9 embodiment of "mounting means."

**ANALYSIS**

Both MASS and Defendants agree that the structure of "mounting means" is illustrated in both the Figure 8/9 and Figure 20 embodiments. The Court's Claim Construction Opinion provides

that “rear of display 152 ” is necessary structure for the Figure 20 embodiment. *See* Docket No. 266, Appendix B. The Court’s exclusion of “rear of the display 16” for Figure 8/9 was unintentional. As with the Figure 20 embodiment, the specification clearly teaches that “rear of the display 16” is necessary structure for the Figure 8/9 embodiment. *See* ‘978 patent, Figs. 8 & 9, Col. 3:63–66 (“The mounting structure 50 includes a ball joint comprising a steel ball 56 formed on a steel shaft 58 supported from the arm 18 and a plastic socket 60 supported from the rear of display 16.”). In fact, the Court’s Opinion included this portion of the specification in its analysis but inadvertently excluded it from Appendix B. Accordingly, “rear of the display 16” is necessary structure and an amended Appendix B is included to reflect such clarification.<sup>1</sup>

## CONCLUSION

For the aforementioned reasons, the Court **GRANTS** MASS’s motion for clarification (Docket No. 282).

**So ORDERED and SIGNED this 30th day of May, 2008.**

A handwritten signature in black ink, appearing to read "LEONARD DAVIS", is written over a horizontal line. The signature is fluid and cursive, with a large, stylized initial 'L' on the left.

**LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE**

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<sup>1</sup> In their response, Defendants attempt to raise a new claim construction issue regarding the structure for connecting the mounting means to the arm assembly. At the *Markman* hearing, Plaintiffs and Defendants agreed that these components were not necessary structure; the Defendants did not take a contrary position in its supplemental briefing, which addressed the “mounting means.” *See* Docket No. 160. Defendants attempt to raise this new issue in response to MASS’s motion is improper. *See* Local Rule CV-7(d). The proper vehicle would be a motion for reconsideration in which the Defendants would need to explain to the Court why the Court should disregard Defendants’ agreement that excluded the newly proposed structure.

## APPENDIX B

U.S. Patent No. RE 36,978	
Disputed Claim Terms	Court's Construction
base member (Claim 16)	the lowermost portion of the system that supports the arm assembly above a surface
base (Claim 17)	[AGREED] same meaning as "base member"
electronic displays (Claims 16 and 17)	[AGREED] electronic devices that represent information in visual form
positioning means for positioning displays (Claims 16 and 17)	apparatus used to position the displays
arm assembly (Claims 16 and 17)	a structure having one or more constituent parts connected to and projecting from the support means
support means for supporting the arm assembly from the base member (Claim 16)	<b>Function:</b> supporting the arm assembly from the base member <b>Structure:</b> upright 20, circular recess 34, washer 36, and bolt 38 (Figure 7) OR upright 158, socket 206, plug 208, and bolt 210 (Figure 19)
support means having a base for supporting the arm assembly above a support surface (Claim 17)	[AGREED] <b>Function:</b> Same as "support means for supporting the arm assembly from the base member" [AGREED] <b>Structure:</b> Same as "support means for supporting the arm assembly from the base member"
support surface (Claim 17)	surface that supports the base
mounting means for mounting the displays to the arm assembly (Claims 16 and 17)	<b>Function:</b> mounting the displays to the arm assembly <b>Structure:</b> ball 56, shaft 58, and socket 60, rear of the display 16, plus equivalents (Figures 8 and 9). OR ball 172, shaft 174, socket 170 with flat surface 190, shell 184 with flat 192, plate 182, screws 186, rear of the display 152, plus equivalents (Figure 20).

U.S. Patent No. RE 36,978	
Disputed Claim Terms	Court's Construction
means for adjusting the angular orientation of each of the displays relative to the arm assembly  (Claims 16 and 17)	[AGREED] <b>Function:</b> adjusting the angular orientation of each of the displays relative to the arm assembly  [AGREED] <b>Structure:</b> Same as "mounting means for mounting the displays to the arm assembly"
angled toward each other to a desired degree  (Claim 16)	[AGREED] No construction
angles relative to each other to a desired degree  (Claim 17)	[AGREED] No construction